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In This Issue

Czech Citizenship Law Lightning Rod for International Criticism

by Erika Schlager 32

Is Greece Oppressing Religious Free Speech?

by Karen Lord 33

Relevant International Norms on Citizenship

by Erika Schlager 35

CPJ Lists Lukashenko and Niyazov as "Enemies of the Press"

by Chadwick R. Gore 36

Confidence Building Measures for Transdnistria

by John Finerty 38

The Current Record of the International Criminal Tribunal for the former Yugoslavia

by Erika Schlager 39

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Photo: Orest Deychakiwsky

Election Day—ballot boxes for parliamentary, regional and local elections at a polling station in the Zhytomyr region.

Commission Staff Observe Parliamentary Elections in Ukraine

by Orest Deychakiwsky

Commission staff traveled to Ukraine to observe the March 29 parliamentary elections, the second democratic election of the Verkhovna Rada since the restoration of Ukrainian independence in 1991. They were part of the Organization for Security and Cooperation in Europe's Parliamentary Assembly (OSCE PA) delegation that was among some 250 OSCE observers. Staff observed the election process and visited polling stations in central-western Ukraine (Zhytomyr and Vynnytsya oblasts, Uman and Bila Tserkva), Donetsk oblast, and Crimea (Simferopol, Sevastopol, Bakhchyseray, Yalta).

The elections were conducted under generally adequate legal and administrative frameworks, but the late passage of laws and regulations relating to the election

Ukraine, continued on page 37

The Commission on Security and Cooperation in Europe, by law, monitors and encourages progress in implementing the provisions of the Helsinki Accords. The Commission, created in 1976, is made up of nine Senators, nine Representatives, and one official each from the Departments of State, Defense, and Commerce. For more information, please call (202) 225-1901.

Czech Citizenship Law Remains Lightning Rod for International Criticism

by Erika Schlager

In March, the U.N. Committee on Racial Discrimination joined the many non-governmental organizations and public officials who have previously criticized the Czech citizenship law; the European Union and the EU parliament also reiterated their concerns regarding the situation of the Roma in the Czech Republic. The Canadian Immigration and Refugee Board, in granting asylum to Romani applicants from the Czech Republic, also concluded that the Czech citizenship law targeted Roma.

Background on the Citizenship Law

The increasing nationalism and seemingly disparate economic interests which ultimately led Czechs and Slovaks to dissolve the Czechoslovak Federal Republic on January 1, 1993, created a special problem for the Roma. Although Czechs and Slovaks were widely praised for ending their seventy-year union without killing each other, too few observers seemed to notice that the brunt of Czech extremism was not directed at the Slovaks to their south but against the Roma in their midst.

This anti-Roma prejudice was most clearly reflected in the citizenship law which the Czech Republic adopted upon splitting from Slovakia, a highly restrictive law designed to make it difficult for Roma to remain in the Czech Republic. (Some Roma who voted in the 1992 parliamentary elections subsequently found that the legislature they elected had denaturalized them.) While life-long or long-term Roma residents of the Czech Republic often found themselves subjected to complicated and burdensome conditions to obtain Czech citizenship, a special amendment to the Czech citizenship law ensured that ethnic Czechs from former Soviet republics would be granted automatic Czech citizenship, based solely on their ethnicity, even though their ties to the Czech Republic may have been severed decades ago.

In sentiment (although not in precise legal form) the Czech law is similar to the citizenship laws adopted post-1991 in Estonia and Latvia; just as those laws were designed to telegraph to Russian-speakers that they had overstayed their welcome, so the Czech law was de-

signed to make it uncomfortable for Roma to remain in the Czech Republic. (A notable difference between the two situations is that Russian-speakers in the Baltic states arrived primarily as a result of the Soviet invasion of 1940; Roma in the Czech and Slovak lands, in contrast, have been there for centuries.) This inhospitable message has been underscored by other laws and practices. For example, Czech families who adopt stateless Roma children have found themselves stripped of all state financial assistance to which the family would otherwise be entitled simply because they adopted a stateless child (who happens to be Romani); under current law, the adopted child does not automatically gain the citizenship of the adoptive parents.

In contrast to the Czech problems, most of the 22

newly independent states in the OSCE have adopted laws to regulate citizenship without generating international criticism. The Ukrainian citizenship law, for example, represents a particularly constructive effort to address citizen-

“Citizenship is man’s basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen.”

—U.S. Supreme Court Chief Justice Earl Warren, dissenting, *Perez v. Brownell* (1958)

ship issues based on a civic, rather than ethnic, conception. Moreover, the governments of certain other OSCE countries whose citizenship laws were the subject of criticism at OSCE meetings—including the Estonian, Latvian, Greek, and Macedonian Governments—recently announced that they will support legislative changes to address the laws’ allegedly discriminatory provisions.

In 1996, the Czech Government adopted cosmetic changes to the citizenship law that were largely designed to placate international critics abroad but lacked the more substantive changes that would bring the Czech law into compliance with internationally recognized norms. In fact, citizenship problems have persisted after the adoption of the 1996 amendment. Although most Roma in the Czech Republic have probably obtained Czech citizenship since 1993, several thousand do not have citizenship and are *de facto* or *de jure* stateless. (The UNHCR, joined by several non-governmental organizations, has

Czech Law, continued on page 34

European Court Reverses Greek Proselytism Convictions

By Karen Lord

Religious liberty includes the right to discuss faith—even when the hope or intent of the speaker is to change the opinion of the listener. Using the law to separate religious expression from other religious practice emasculates this fundamental right which is so clearly protected in numerous international agreements, including the European Convention on Human Rights and the Helsinki Accords. The European Court of Human Rights agreed with this assessment of religious liberty on February 24 when the Court revisited Greece's controversial ban on proselytism in the *Larissis* case.

The issue before the Court was whether the Greek Government could prohibit a military officer from discussing his faith with subordinates and civilians. The Court decided that, while it may be reasonable to prevent Air Force and other military officers from proselytizing their subordinates, discussions about religion with civilians cannot not be prevented or limited. The Court found that Greece's conviction of two military officers—who are Pentecostal believers—for proselytizing civilians violated the officers' religious liberty under Article 9 of the European Convention on Human Rights. The Court's decision relied heavily upon the 1993

Kokkinakis decision wherein the Court stated, "According to Article 9, freedom to manifest one's religion... includes in principle the right to try to convince one's neighbor, for example through 'teaching,' failing which, moreover, 'freedom to change [one's] religion or belief,' enshrined in Article 9, would be likely to remain a dead letter."

Many of the OSCE agreements, which are binding on Greece, include numerous provisions on religious liberty—including religious free speech. Specifically, the 1991 Copenhagen Document reaffirmed that "everyone will have the right to freedom of thought, conscience and religion. This right includes freedom to change one's

religion or belief and freedom to manifest one's religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance." (Para. 9.4) All OSCE States have also reaffirmed that "everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers." (Para. 9.1)



However, in violation of these Helsinki commitments, Article 13 of the Greek Constitution specifically prohibits proselytism. Even more egregious, Law No. 1363/38, Section 4, (as amended by Law No. 1672/39), provides:

"1. Anyone engaging in proselytism shall be liable to imprisonment and a fine of between 1,000 and 50,000 drachmas; he shall, moreover, be subject to police supervision for a period of between six months and one year to be fixed by the court when convicting the offender.

"2. By 'proselytism' is meant, in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion

(eterodoxos), with the aim of undermining those beliefs, either by any kind of inducement or promise of an inducement or moral support or material assistance, or by fraudulent means or by taking advantage of the other person's inexperience, trust, need, low intellect or naivete."

Greece's Constitution and laws chill religious liberty—the anti-proselytism laws have been used overwhelmingly against religious minorities in Greece.

The free, unfettered discourse of ideas is a fundamental principle of democracy and the hallmark of a free society. □

led efforts to help such people obtain Czech citizenship.) This number currently includes several hundred orphans. Under these circumstances, the law continues to be a lightning rod for international criticism.

The Bratinka Report

In October 1997, the Czech Government adopted a report "On the Situation of the Romani Community in the Czech Republic and Government Measures Assisting its Integration in Society," prepared by Minister without Portfolio Pavel Bratinka. This report addresses a broad range of issues relating to the Romani minority, including education, discrimination against Roma in public places, the treatment of Romani Holocaust sites in the Czech Republic, and the protection and promotion of Romani culture.

The Bratinka report also devotes a full section to the problems of Czech citizenship for the Romani minority. Most significantly, it concludes that "a fundamental solution [to the citizenship problems] would be adoption of an amendment to Law no. 40/1993 Coll. [the current citizenship law] which would automatically make it possible for Slovak citizens who had permanent residence in the Czech Republic as of December 31, 1992 and have retained it until the present to acquire Czech citizenship." This, in short, is what the international community has called for since the original Czech citizenship law was adopted in 1992.

In November 1997, however, the government of Vaclav Klaus fell. A durable coalition could not be formed. An interim government has been established and elections will be held in June 1998.

A new Czech Government, when formed, will face the task of responding to the Bratinka report's recommendation: a fundamental solution to the citizenship law problems requires amending the existing law—and not just tinkering with its application. Since the Bratinka report was issued, others have added their support to this view.

U.N. Committee: Law Should Be Amended

In March 1998, the Czech Republic presented its report to the U.N. Committee on the Elimination of All Forms of Racial Discrimination. A press release issued by the Committee on this meeting noted that "Mr. Diaconu [the Committee's rapporteur] pointed to the problem of Czechoslovak citizens of Slovak origin having been denied Czech citizenship following the secession. In this regard, the discriminatory provisions of the

1993 Naturalization Law No. 40 should be amended." In addition, the Committee's final recommendations stated, in paragraph 23: "The Committee also urges the State Party to resolve the remaining problems relating to the acquisition of Czech citizenship for all residents, including prisoners, and children and adolescents in institutions, in particular members of the Roma minority."

EU to Czech Republic: Fix Your Citizenship Law

Perhaps even more significantly, in its recommendations on "Accession Partnership - Czech Republic" (released in March 1998), the European Union stated "[t]he problem of discrimination affecting the Roma, notably through the operation of the citizenship law, needs to be addressed." The EU Parliament spoke even more directly to this matter, saying that improving integration of the Romani minority should be a short-term priority. The EU Commission, in contrast, had said this could be a medium-term priority. (Short-term priorities are to be addressed in 1998, while medium-term priorities may be completed over a longer period of time but must still be completed before EU accession.) President Havel has also warned that manifestations of racism and xenophobia might affect Czech-EU negotiations on accession.

Canadian Board: Citizenship Law Targeted Roma

In April, the Canadian Immigration and Refugee Board issued rulings on some of the first cases of Romani asylum seekers who arrived in Canada last fall. (The sudden arrival of large numbers of asylum seekers from the Czech Republic led Canada to re-impose visa restrictions on Czech travelers last year.) In announcing its first round of rulings, the Canadian Board concluded, in the illustrative case of the Horvath family applicants, it would have been "unreasonable for them to have sought or now seek the protection [against racist attacks] of their home authorities and that such protection would not be forthcoming." Moreover, the Board concluded that the Czech citizenship law specifically targeted Roma.

Who Are the Czech Roma?

The Roma are a minority that migrated to the European continent from the Indian subcontinent during the early centuries of this millennium. They are dispersed throughout all European countries; taken together, there may be 10 million Roma in Europe today, with large concentrations in Central and Southern Europe. They have suffered many forms of severe persecution: mass

Relevant International Norms On Citizenship In The Context Of State Succession

“(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality or denied the right to change his nationality.”

—Article 15, Universal Declaration on Human Rights

“Every child has the right to acquire a nationality.”

—Article 24 (3), International Covenant on Civil and Political Rights

“The participating States

(56) Underline that all aspects of nationality will be governed by the process of law. They will, as appropriate, take measures, consistent with their constitutional framework not to increase statelessness;

(57) Will continue within the CSCE the discussion on these issues.”

—The Helsinki Document 1992 (Chapter VI)

“(1) States involved in a succession should consult and as necessary negotiate to avoid statelessness or other undesirable consequences such as double nationality or capricious consequences for individuals.

(2) In principle, the predecessor state should be obliged not to withdraw its nationality in certain cases, particularly where statelessness would result.

(3) In situations in which the predecessor state might withdraw its nationality once nationality is granted by the successor, the successor state should be obliged to grant its nationality.

(4) In certain situations, such as that of a person born in the territory of what became the successor state but residing in the territory of the predecessor state, both the predecessor and the successor states should grant the person a right to opt for either nationality. In cases involving unification, successor states should be obligated to grant nationality to nationals of a predecessor state residing in the successor state or a third state unless, in the latter case, they also have the nationality of the third state. In cases involving dissolution, each successor state should be obligated to grant nationality to those born in what became its territory and those who had the nationality of the predecessor state and are residing in what became the territory of the successor. In certain circumstances, such as those of persons born in the territory of one successor state and resident in another successor state, both successor states should grant a right of option. In no event should a successor state be entitled to impose its nationality on anyone.”

—Summary of the U.N. International Law Commission’s 1995 report, *State Succession and Its Impact on the Nationality of Natural and Legal Persons*, by Robert Rosenstock, in *Current Developments: The Forty-Seventh Session of the International Law Commission*, 90 Am. J. of Int’l L. 106, 114 (1996)

“The OSCE Parliamentary Assembly . . .

33. Calls on the participating States to give equal rights to individuals as citizens, not as members of a particular national or ethnic group. Accordingly, they should ensure that all citizens be accorded equal respect and consideration in their constitutions, legislation and administration and that there be no subordination, explicit or implied, on the basis of ethnicity, national origin, race, or religion; further calls on the participating States to acknowledge that citizenship itself is based on a genuine and effective link between a population and a territory and should not be based on race or ethnicity and must be consistent with the state’s international obligations in the field of human rights;

34. Urges that, upon a change in sovereignty, all persons who have a genuine and effective link with a new State should acquire the citizenship of that State.”

—The Ottawa Declaration of the OSCE Parliamentary Assembly, July 8, 1995

“States shall ensure that, through the operation on national laws, all persons who were citizens of a predecessor State and who are permanently residing on the territory of a successor State, enjoy or be granted citizenship.”

—Section I, para. 15 (b), Programme of Action, adopted by the Regional Conference to address the problems of refugees, displaced persons, other forms of involuntary displacement and returnees in the countries of the Commonwealth of Independent States and relevant neighbouring States (the Conference on Migration), Geneva, 30-31 May 1996.

“In all cases of State succession, the successor State shall grant its nationality to all nationals of the predecessor State residing permanently on the transferred territory.”

—*Consequences of State Succession for Nationality*, Venice Commission for Democracy through Law, CDL-INF (97) 1 (1997)

race-based imprisonment (e.g., in 1749, in Spain), slavery (in Romania, Moldova, and Bessarabia, beginning circa 1600 and abolished in 1856), forced settlement and assimilation (e.g., under the reign of the Austrian-Hungarian monarch, Maria Theresa, between 1740-80), and, most recently, they were targeted for extermination by the Nazis.

“Roma” is a term of self-ascription; they are sometimes called “Gypsies,” a name that derived from the early but mistaken European impression that Roma had come from Egypt. This name is considered pejorative by many Roma. Notwithstanding a long history of persecution, many Roma have retained the Romani language (which is related to Hindi) and culture.

The Czech Republic has a population of about 10 million people. The Roma are the largest minority; although there are no reliable census figures on the size of the Roma population, they are usually estimated to be between 200,000 and 300,000. Virtually all of the Roma who lived in the Czech lands prior to World War II were killed (or deported to their deaths) during the Nazi occupation from 1939-45. Most of the Roma who live in the Czech Republic today were brought to the Czech part of the Czechoslovak Socialist Federal Republic from the Slovak lands between 1948-68 to fill labor shortages that were created by the violent mass expulsion of the German minority from the Czech lands between 1945 and 1948. Although the Roma were not forcibly moved within Czechoslovakia the way Stalin moved minorities at gun point and in cattle cars to Central Asia, they were “persuaded” to move by the fact that the Communists controlled the economy. In practice, this meant that Roma who took jobs recommended by the Central Commit-

tee were less likely to be prosecuted and jailed as “parasites of the working class.”

During the Communist era, Roma were considered good candidates to be molded into new Communist men and women. Efforts were made to settle them forcibly, thus breaking their capitalist habits of engaging in seasonal or migratory professions such as horse trading, metal working, basket weaving, etc. Many members of majority ethnic groups in Eastern Europe hold the view that the Communists were “good” to the Roma. A former Czechoslovak official recently offered this view publicly, stating that the Roma benefitted from “positive discrimination” under the Communists—and even fared better than other ethnic groups. To make his point, he mentioned the housing, schooling, and free medical care the Roma received. He failed to mention, however, that the housing usually consisted of substandard ghettos; the schooling consisted of a virtually segregated system in which Roma were rarely permitted to gain more than basic technical skills; and the “free health care” included the forced sterilization of Romani women. Significantly, this view that Roma “benefitted” from the Communists appears to have widespread currency: a *New York Times* reporter echoed this view last year when he wrote that former Romanian dictator Nicolae Ceausescu was good for the Roma because he suppressed their culture (an assertion one cannot imagine being made about Hungarians, Jews, Germans or other Romanian minorities). At the same time, it must be acknowledged that the kind of widespread racially motivated attacks to which Roma are subjected today did not occur under the Communist police state. □

CPJ Lists Belarus’ President Alexander Lukashenko, Turkmenistan’s President Saparmurat Niyazov, as “Enemies of the Press”

by Chadwick R. Gore

In observance of World Press Freedom Day, May 3, the New York-based NGO Committee to Protect Journalists (CPJ) released its annual “10 Enemies of the Press.” Presidents Lukashenko and Niyazov were the only leaders of OSCE participating States to be so named. In their indictment, CPJ noted that, “Lukashenko wages an ongoing, Soviet-style campaign against independent and foreign media in Belarus. His March directive, ‘On Enhancing Counter-Propaganda Activities Towards Opposition Press’ forbids state officials to make any documents available to independent media and bans government advertising in all but state-run venues.” Regarding Niyazov, CPJ said, “The self-proclaimed ‘father of all Turkmen’ rules his country like the old-style totalitarian, cult-of-personality Soviet dictator he is—making Turkmenistan the most repressive of the former Soviet states. A pervasive culture of fear stifles dissent.” It is regrettable that these leaders continue to fail to see and fulfill their obligations under the Helsinki process. □



Photo: Chadwick R. Gore

Although a decorated World War II veteran, this Tatar was denied the vote ...

led to confusion and uncertainty about the electoral process among the electorate. There were violations, transgressions and irregularities, both during the campaign and the voting. While the campaign was peaceful in most of the country, it was marred by some tension—including incidents of violence—especially in Odesa and Crimea. The failure to allow non-citizen Crimean Tatar returnees the opportunity to vote, in contrast to arrangements that had permitted them to vote in the 1994 elections, also tainted the elections. Legitimate questions were raised about the neutrality of the state apparatus in the elections, and there were instances of harassment and pressure against opposition media.

Socio-economic issues dominated the campaigning, especially the state of the economy and poor living standards, including wage and pension arrears, as well as the issue of corruption.

The elections were held under a new election law which replaced the majoritarian system, introducing a mixed electoral system where half of the 450 deputies are elected from single-mandate districts and half from national party lists. Oblast (region), rayon (country) and local elections were also held at the same time.

Considering its complexity, the balloting itself was reasonably well managed, and voting was generally calm and orderly, as 70 percent of Ukraine's electorate turned out to vote. On voting day, Commission staff witnessed occasionally crowded conditions at polling stations and some irregularities, including voting outside the voting booths ("open" voting) and family voting. In Crimea, Commission staff received several reports of young military recruits being instructed by senior officers in their military units (both Army and Navy) to vote for the Communist Party. On the positive side, Commission staff observed greater numbers of domestic observers at polling stations representing various parties and candidates than in previous elections, which helped ensure greater control over the voting process and count. International observers, including Commission staff, concluded that Ukrainian voters generally were able to express their political will freely, and the results of the elections do appear to have reflected the will of the electorate.

With respect to the results, eight of the 30 parties contesting the election passed the four-percent threshold required for entry into the parliament for the 225 parliamentary seats apportioned according to party lists. The Communist Party of Ukraine came in first, with 24.6 % of the party list vote, followed by the national democratic Rukh with 9.4% and the leftist Socialist/Peasant bloc with 8.5%. Most of the remaining parties passing the threshold are centrist. In the 225 single-mandate districts, independents won the largest number of seats (114). In terms of total composition, out of 450 total



Photo: Chadwick R. Gore

...while these Ukrainian soldiers reportedly were ordered by their superior officer to vote for the Communist Party.

Ukraine, continued on page 38

Odesa Meeting Agrees to Confidence Building Measures for Transnistria

by John Finerty

On March 20, at Odesa, the leaders of Moldova and the secessionist region of Transnistria reached agreement on a 10-point program of confidence building measures between the two sides. “Striving to bring closer a complete resolution of the conflict” and “attempting to create an atmosphere conducive to the re-establishment of mutual understanding [and] facilitation of contact between people,” both sides committed *inter alia*, to reduce the numerical composition of peacekeeping forces in the security zone to approximately 500 men from each side, and to reduce the number of “border” posts and check points of the Joint Peacekeeping Force (JPF) within the zone. As part of the agreement, Ukrainian peacekeepers will join the existing Moldovan, Russian, and Transnistrian units of the JPF. The parties also agreed to contribute to the earliest possible withdrawal from Transnistria of excess Russian military equipment; welcome the readiness of Ukraine to provide transit for the equipment across its territory; and restore operation of two bridges across the Dniestr River that had been closed as a result of the fighting in 1992, noting that the parties “highly appreciate the intermediary activity of the OSCE on questions of the Transnistrian settlement.” President Lucinschi of Moldova, Transnistrian leader Smirnov, then-Prime Minister Chernomyrdin of Russia and President Kuchma of Ukraine, as guarantor-states, and OSCE Head of Mission John Evans signed the agreement. □

Ukraine, continued from page 37

seats, the Communists hold 121, independents 114, Rukh 40, the Socialists/Peasants 36, Hromada (led by Kuchma rival, former Prime Minister Pavlo Lazarenko) 32, and the pro-presidential People’s Democratic Party 30. Remaining parties present in the parliament all have less than 20 seats each. The new parliament will include many new faces since only ninety deputies from the old parliament of the 354 who ran were re-elected.

The election resulted in a parliament similar in terms of composition to the old parliament, albeit with a more Communist tilt, partly reflecting frustration with living standards, especially among elderly voters. The left will constitute about 40 percent of parliament’s membership, with the remainder a mix of centrists, independents and national democrats. With other strongly anti-presidential forces, the left may approach, or even exceed a majority in forming a hard opposition to the president and gov-



Photo: Chadwick R. Gore

“So, do you want a little Socialism? Vote for the Communists!” —a barn outside of Sevastopol, Crimea



Photo: Orest Deychakiwsky

“Voting Step by Step”—voting procedures posted in polling stations throughout Ukraine

ernment on some key issues. Centrists and independents who may be more amenable to cooperating with the executive branch may constitute about 130 new deputies, and nearly 60 will represent the national democratic (center-right) forces.

Given its makeup, it is highly doubtful that the new Verkhovna Rada will be a force for radical reform. At the same time, the likelihood of significant backsliding is small. Conflict between the executive branch and the Rada probably will continue, especially in the run up to the Fall 1999 presidential elections. Unless President Kuchma is able to engage the majority of the Rada to work with him in the larger interests of the country in order to reverse the dismal economic situation, we are likely to see a continuing “muddling through” and erratic pace of reforms. □



Photo: Erika Schlager

The Current Record of the International Criminal Tribunal for the former Yugoslavia

by Erika Schlager

STATUS OF INDICTMENTS

MAY 1, 1998

Number of Persons Publicly Indicted :	79
Deceased (indictment standing):	2
Deceased (indictment withdrawn):	1
Other persons against whom indictments have been withdrawn:	3
Number of Living Persons Publicly Indicted:	73
At large:	45
In custody in The Hague:	25
Under house arrest in The Hague:	1 (Blaskic)
Released on bail:	1 (Simic)
In custody pending transfer to The Hague:	1 (Kostic)

Indictments

The Tribunal has issued public indictments naming 79 people, including 7 for genocide and 8 for gang rape and enslavement of women. Those indicted include 53 Bosnian Serbs, 1 Croatian Serb, 19 Bosnian Croats (18 of whom fought with Bosnian Croat forces and 1 of whom fought with Bosnian Serb forces), 3 Serbian Yugoslav Army officers, and 3 Bosniacs. The highest ranking political and military figures publicly indicted to date are, respectively, Radovan Karadzic and General Ratko Mladic, both of whom remain at large.

Arrests and Custody

A total of twenty-six indicted suspects are currently in custody or under house arrest in The Hague; one of them (Tihomir Blaskic) holds the rank of general.

General Djordje Djukic was arrested by Bosnian forces on January 30, 1996 and surrendered to the Tribunal in February 1996. He was released on humanitarian grounds in April 1996 and subsequently died of cancer. The Tribunal's judges declined to drop the charges against him. Another indictee, Simo Drljaca, was killed while resisting his arrest by SFOR forces.

Col. Aleksa Krsmanovic was arrested with Djukic and held by the Tribunal under provisional arrest for several weeks, but eventually released for insufficient evidence (i.e., he was never named in any indictment). In June 1996, the Tribunal released another man, Goran Lajic, concluding that his arrest (by Germany) was a case of mistaken identity (i.e., right name, wrong man); charges against Goran Lajic stand.

In December 1997, the Tribunal withdrew the counts against three Bosnian Croats—Marinsko Katava, Ivan Santic, and Pero Skopljak—who had been named in the indictment against "Kupreskic and others" (Lasva Valley). The prosecution had concluded, in part based on new information that had come out during the trial of Blaskic, that the evidence did not justify proceeding to trial on any of the counts in these three cases. At the same time, the Tribunal confirmed that indictee Stipo Alilovic had died in 1995 and withdrew his indictment.

Trials and Sentencing

After hearing a number of challenges to the court's jurisdiction, the Tribunal's first case, the trial of Dusan Tadic, proceeded to a hearing on the merits on May 7, 1996. On May 7, 1997, Tadic was found guilty on 20 of 31 counts against him, and acquitted on 11 counts. On July 14, 1997, Tadic received sentences totaling 97 years, to run concurrently for 20 years.

Tribunal, continued on page 40

On May 31, 1996, Drazen Erdemovic, an ethnic Croat who fought with Bosnian Serb forces confessed his involvement in the killings of 1200 Bosnian people after the fall of the U.N.-designated "safe haven" of Srebrenica in July 1995. (Erdemovic also testified against Karadzic and Mladic in July 1996.) On November 19, 1996, Erdemovic was sentenced to ten years in prison. On March 5, 1998, The Hague reduced Erdemovic's sentence to five years after the court concluded that the prosecution had erred in not informing Erdemovic that he could have pleaded guilty to violations of the Geneva Convention, rather than crimes against humanity. Pleading guilty to war crimes would have resulted in a lesser sentence for Erdemovic.

As of February 1998, four trials are taking place simultaneously. In addition to the two trials which began in 1997 (Tihomir Blaskic and the four defendants in the Celebici trial (Delalic, Delic, Landzo and Mucic), the trials of defendants Zlatko Aleksovski and Slavko Dokmanovic began in January.

Cooperation with the Tribunal

Of those in custody, there are: 12 Bosnian Croats, 9 Bosnian Serbs, 3 Bosniacs, 1 Croat, and 1 Serb.

The Bosnian Government has arrested and surrendered to the Tribunal two indicted war criminals found within its effective jurisdiction. Croatia has transferred or facilitated the surrender of thirteen suspects to The Hague. Serbia-Montenegro transferred one suspect after he confessed to crimes. Indicted suspects have been seen openly in Serbia-Montenegro and in the Republika Srpska. Germany and Austria have arrested and transferred to The Hague other suspects.

In April 1996, Antonio Cassese, President of the Judges of the War Crimes Tribunal, formally requested the Security Council take steps against Serbia-Montenegro, noting its willful non-compliance with the Tribunal's orders. He reiterated this call in June 1996, after indicted suspect General Ratko Mladic was sighted attending Djordje Djukic's funeral in Belgrade. (Mladic was seen vacationing in Montenegro in July 1997 and is believed by some to be residing in Serbia.)

On June 27, 1997, officials of the Tribunal, in coordination with the U.N. Transitional Administration in Eastern Slavonia (UNTAES), arrested Slavko Dokmanovic under a sealed indictment. It was the first time U.N. officials had been involved in executing an

arrest warrant. On July 10, 1997, SFOR troops in Bosnia arrested Milan Kovacevic and Simo Drljaca; Drljaca was killed while resisting arrest. In December 1997, SFOR troops arrested two more indictees, Vlatko Kupreskic and Ante Furundzija.

Thus far, France has refused to permit its soldiers, some of whom serve as peacekeepers and have been called to testify at The Hague, to appear before the Tribunal. In December 1997, Chief Prosecutor Louise Arbour criticized the lack of cooperation from French authorities with the Tribunal and suggested that war criminals are safe in the French zone.

On February 14, 1998, two indictees, Miroslav Tadic and Milan Simic, surrendered to representatives of the Tribunal. Tadic and Simic, who are charged with crimes against humanity, were the first Bosnian Serbs to surrender to the tribunal. On February 24, 1998, another Bosnian Serb suspect, Simo Zaric, turned himself in to peacekeeping authorities. The momentum of surrendering Bosnian Serb war crimes suspects continued on March 4 when Dragoljub Kunarac turned himself in to NATO troops. Kunarac is the first indictee accused of the rape and torture of women to surrender.

Background

The statute establishing the International Criminal Tribunal for the Former Yugoslavia was adopted by the U.N. Security Council in Resolution 827 in May 1993. It establishes an immediate and legally binding obligation for states to cooperate fully with the Tribunal.

This court is the first international tribunal established for the prosecution of war criminals since World War II.

The Tribunal may not try suspects in absentia, but it has the authority, under the Tribunal's Rule of Procedure 61, to hold special proceedings (sometimes called "super-indictments") in open court at which evidence against the accused is received. These public proceedings may result in the issuance of an international arrest warrant. Thus far, eight international arrest warrants have been issued.

The Tribunal is an independent body. No entity—neither the governments of any of the former Yugoslav states nor any of the various international bodies or individual countries which have engaged in mediating peace negotiations—has the authority to require the Tribunal to recognize any amnesties it might purport to grant. Tribunal officials have stated they would refuse to recognize putative amnesties.

The Tribunal has jurisdiction over individuals responsible for war crimes, crimes against humanity, and genocide committed on the territory of the former Yugoslavia after January 1, 1991.

Guilt must be proved beyond a reasonable doubt. The maximum sentence is life imprisonment.

Judge Richard Goldstone of South Africa served as the first Chief Prosecutor and as prosecutor for the Rwandan War Crimes Tribunal. He was succeeded on October 1, 1996, by Judge Louise Arbour of Canada.

Patricia Viseur-Sellers serves as Legal Advisor for Gender-Related Crimes with the Office of the Prosecutor.

The Tribunal consists of two trial chambers, each with three judges, and one appeals chamber with five judges. The appeals chamber is shared with the Rwandan War Crimes Tribunal. An American, Judge Gabrielle Kirk McDonald, currently serves as the Tribunal's President.

Other Legal Fora for Suits

A state-to-state suit brought by Bosnia-Herzegovina against Serbia-Montenegro for a claim of genocide was lodged before the International Court of Justice on March 22, 1993 and is still pending. Jurisdiction in that case has been upheld. Serbia-Montenegro has brought a counter-claim of genocide against Bosnia-Herzegovina.

Two pending class action suits, joined on appeal, have been brought before U.S. courts alleging violations of the Alien Tort Act and the Torture Victims Protection Act by Bosnian-Serb leader Radovan Karadzic. Jurisdiction was upheld by United States Supreme Court in June 1996.

Brief Chronology

Oct. 1992: UN Security Council establishes a five-member "Commission of Experts" to investigate war crimes in the former Yugoslavia

Feb. 1993: UN Security Council agrees to establish a war crimes tribunal (the Tribunal); the Commission of Experts is ordered to wrap up its work; Tribunal's statute is adopted in May 1993

July 1993: Bosnia-Herzegovina files suit before the International Court of Justice against Serbia-Montenegro alleging genocide (case still pending; jurisdiction upheld)

March 1993: A class-action civil suit is filed in U.S. courts against Radovan Karadzic alleging, *inter alia*, genocide (case still pending; jurisdiction upheld)

Sept. 1993: Selection of judges for the Tribunal is completed

July 1994: Justice Richard Goldstone of South Africa is chosen as the Tribunal's Chief Prosecutor

Nov. 1994: Tribunal indicts the first Bosnian Serb suspect

July 1995: Tribunal indicts Radovan Karadzic and Ratko Mladic, the highest ranking political and military leaders in the Bosnian Serb hierarchy

Nov. 1995: Tribunal indicts first Bosnian Croat suspects

Nov. 1995: Tribunal indicts first suspects from Yugoslav People's Army

Nov. 1995: Preliminary hearings are held before the Tribunal at The Hague, paving the way for the first trial to begin sometime in 1996

March 1996: Tribunal indicts first Bosnian Muslim suspects

May 1996: Trial against Dusan Tadic begins (having disposed of jurisdictional challenges)

June 1996: Tribunal issues first indictments dealing specifically with sexual offenses (including enslavement)

Nov. 1996: Drazen Erdemovic, an ethnic Croat who fought with Bosnian Serb forces, is sentenced to ten years; he was the first indicted person to plead guilty, admitting to his involvement in the killings of 1200 Bosnian people after the fall of the U.N.-designated "safe haven" of Srebrenica in July 1995

May 1997: Dusan Tadic is convicted on 20 charges; on July 14, 1997, he is sentenced to 20 years in prison

June 1997: Tribunal authorities, acting with UNTAES forces, make first arrest (Slavko Dokmanovic)

July 1997: SFOR troops in Bosnia make first arrests (Milan Kovacevic and Simo Drljaca; Drljaca was killed while resisting arrest)

Dec. 1997: SFOR troops make two more arrests (Vlatko Kupreskic and Ante Furundzija)

Jan. 1998: SFOR makes another arrest (Goran Jelusic a.k.a. the "Serb Adolf")

Feb. 1998: Three Bosnian Serbs (Milan Simic, Miroslav Tadic, and Simo Zaric) surrender to representatives of the Tribunal

March 1998: Dragoljub Kunarac, a Bosnian Serb, surrender to representatives of the tribunal. □

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